

*United States Court of Appeals
for the
District of Columbia Circuit*



**TRANSCRIPT OF
RECORD**

291A

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,498

DISTRICT OF COLUMBIA

v.

WILSON C. WARREN, Administrator of the Estate of Matilda
I. Ratcliffe, Deceased, Administration No. 107194

DANIEL PARTRIDGE, III

Appellant

No. 22,499

IN RE: ESTATE OF MATILDA I. RATCLIFFE, Deceased,
DISTRICT OF COLUMBIA.

v.

WILSON C. WARREN, Administrator of the Estate of Matilda
I. Ratcliffe, Deceased, Administration No. 107194

DANIEL PARTRIDGE, III

Appellant

On Appeal from Orders of the United States
District Court for the District of Columbia

BRIEF FOR APPELLANT

United States Court of Appeals
for the District of Columbia Circuit

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STATEMENT OF ISSUES

1. Did the District Court err in refusing to allow reasonable counsel fees to counsel of record for the administrator for professional services rendered to the administrator in connection with the administration of the estate?

2. A. Did the District Court err in failing to rule that counsel of record for the administrator should have been given such notice by the auditor as to give him an opportunity to present his claim for counsel fees?

B. Did the District Court err in failing to rule that orders in the proceedings below should have been served on Appellant, attorney of record for the administrator, in sufficient time to give Appellant an opportunity to object?

STATEMENT UNDER RULE 8(d)

Case Number 22.498 was previously before this Court under Number 19.178.

There are presently pending before this Court Applications for Writs of Mandamus Nos. 22.416 and 22.417, which by Order of this Court filed December 4, 1968, are being held in abeyance for consideration of the divisions of this Court assigned to hear arguments on the merits in this appeal.

Daniel Partridge, III appeals from the order overruling his Exceptions to the Auditor's Report and Petition For Allowance of Counsel Fees and from the Order ratifying the Report of Auditor, authorizing distribution of balance of assets, discharging fiduciary and surety upon filing certificate of distribution entered in each case below.

JURISDICTIONAL STATEMENT

This Court has jurisdiction to review the District Court's Order overruling Appellant's "Exception to Auditor's Report and Petition For Allowance of Counsel Fee" and to review the Order of the Dis-

trict Court confirming the auditor's report, as final decisions pursuant to 28 U.S. Code 1291.

If the order overruling Appellant's "Exception to Auditor's Report and Petition For Allowance of Counsel Fee" is not final because of its failure to specifically deny the Petition for Allowance of Counsel Fee, Appellant's Applications for Writs of Mandamus pending before this Court should be granted and this appeal should be decided as though an order denying the petition had been passed.

STATEMENT OF THE CASE

1. Appellant is a member of the District of Columbia bar in good standing and has been in active practice in the District of Columbia since October, 1929. In 1962 when he was retained to represent the administrator in the Ratcliffe estate, he had been representing fiduciaries of estates and acting as fiduciary of estates for about 33 years (App. 5 - 9).

2. September 22, 1962 he was retained by Appellee, Wilson Warren, to represent him in the administration of the Estate of Matilda I. Ratcliffe and spent 14.90 recorded or 18 estimated hours of legal services regarding the administration of the estate (App. 8, 9). During the course of the administration Mr. Warren refused to follow Appellant's advice on a number of occasions and Appellant was unable to get him to file a final account showing distribution of the net assets to the District of Columbia as Appellant advised him to do. If Mr. Warren had followed Appellant's advice he would not have had to come to the District of Columbia at all and the administration of the estate would have been a relatively simple administration completed in the latter half of 1963 (Record, Admin. 107,194, misc. letters, not numbered, at end of record).

3. The District of Columbia sued the administrator on the claim for reimbursement for the cost of care rendered by Saint Elizabeth's Hospital to recover the net assets of the estate. August 28, 1967 two identical orders of reference were passed in the administration and in the civil action ordering that each of those causes be referred to the auditor for the purpose of stating the final account of the administrator and ascertaining the sum available for which judgment in favor of the District of Columbia might be entered in accordance with Section 20-1502, D.C. Code, 1961 Edition, Supplement V. Those orders provided that upon the filing of the final account and approval thereof by the court a judgment in favor of the District of Columbia should be entered against Wilson C. Warren to the extent of the assets available for that judgment. Copy of the order filed in the administration cause was not served on Appellant before it was executed by the judge (App. 9).

4. On September 28, 1967 the Appellant received a Notice of Meeting of Counsel (App. 20) stating that the purpose of the meeting was to consider the execution of an Order of Reference filed by the District of Columbia. On October 2, 1967 Appellant wrote to the Auditor stating that he would not attend the meeting of counsel unless his presence was deemed necessary (App. 26). On March 27, 1968 Appellant received a tentative draft of an Auditor's report in that proceeding containing a recommendation that the Court appoint a guardian ad litem to represent Mr. Warren (App. 27). On that same day Appellant wrote to the Auditor stating that he had no suggestions or changes to be made in the tentative draft of the Auditor's report and he requested the Auditor to note his change of address (App. 31). On April 11, 1968 Appellant received a Notice of Filing of the Report of the Auditor (App. 30) which recommended the appointment of a guardian ad litem. On May 15, 1968 Appellant received a copy of the Order appointing the guardian ad litem (App. 32). On August 7, 1968 Appellant received a copy of

the report of the auditor and an account and a notice of its filing on August 6 (App. 10 - 21). He received no copy of this report or account before it was actually filed. That report and account were sent to Appellant's old mailing address, whereas the preliminary report of the auditor recommending the appointment of a guardian ad litem and the order had been sent to Appellant's new address. The account recommended an allowance of 10% of the gross estate of the Administrator, but made no allowance for counsel fees to the Appellant (App. 17).

5. Appellant never did receive a notice of any hearing before the auditor for the statement of an account (App. 5).

6. The first time Appellant had a chance to present his claim for counsel fees was after he had received the final report of the auditor on August 7, 1968 (App. 5).

7. August 13, 1968 Appellant filed his exceptions to the auditor's report and petition for allowance of a counsel fee (App. 5).

8. September 13, 1968 the court entered an order reciting that it considered the Exception to the Auditor's Report and the Petition For Allowance of Counsel Fee, overruling the Exception to the Auditor's Report but failing to pass upon the Petition For Allowance of Counsel Fee (App. 33).

9. October 11, 1968 the District Court ordered that the auditor's report be ratified and confirmed for judgment for the District of Columbia against Wilson C. Warren in the amount of \$2,241.55; and that the balance be distributed in accordance with the auditor's report (App. 33 - 35). This Order failed to specifically pass on the petition for allowance of counsel fee and a supplemental order denying that petition was presented to the Judge who refused

to sign the same (App. 36, 37). Applications for mandamus to require a specific ruling on the petition for allowance of a counsel fee are pending in this Court (U.S. Court of Appeals, D.C. Circuit Nos. 22416, 22417, consolidated).

10. Notice of Appeal was filed on October 11, 1968 (App. 38).

STATUTES INVOLVED

Title 11, Section 522, District of Columbia Code, 1967 edition, states:

"(a) The United States District Court for the District of Columbia has and may exercise all the power and jurisdiction by law held and exercised by the Orphans' Court of Washington County, District of Columbia, prior to June 21, 1870.

"(b) In addition to the jurisdiction conferred by subsection (a) of this section, the District Court has full power and authority and *plenary* jurisdiction to:

* * *

(4) hear, examine, and decree upon accounts, claims, . . ." (Emphasis added)

Title 20, Section 1705, District of Columbia Code, 1967 edition states:

"On the other side of the account the Executor or Administrator *shall* state the disbursements made by him and debts and allowances, as follows:

* * *

(6) The allowance to the Executor or Administrator for his costs, *attorney's fees*, and extraordinary expenses which the Court considers proper to allow." (Emphasis added)

STATEMENT OF POINTS

1. District of Columbia practice requires that persons appearing before the Probate Court applying for Letters of Administration or for Probate and Letters Testamentary, be represented by local counsel. Reasonable attorneys fees to counsel for services so rendered are a first and primary charge against the assets of the estate, subject only to supervision as to amount by the District Court. The District Court erred in failing to allow any fees to counsel of record for the Administrator for services rendered the Administrator in connection with the administration of his estate.

2. The Auditor, United States District Court, should follow his own long standing practice and custom and the rules of the District Court when stating an account pursuant to an order of reference. He failed to do this when he sent Appellant no notice of any hearing to settle an account and no copy of his tentative auditor's report containing any account before filing. The District Court's failure to so hold was error.

3. Orders issued by the District Court are required by rule to be served upon all parties to a cause. The District Court erred in failing to rule that orders in the proceedings below should have been served on counsel of record for the Administrator in sufficient time to give Appellant an opportunity to object.

SUMMARY OF THE ARGUMENT

1. It is the practice in the District of Columbia to require that persons appearing before the Probate Court applying for Letters of Administration or for Probate and Letters Testamentary, be represented by counsel. The reasonable charges by an attorney for his services so rendered are a first and primary charge against that estate, payable from its assets as costs of administration. While the

amount of attorneys fees so taxable is supervised by the District Court in the exercise of its equitable discretionary power, the grant of that discretion implies a right which cannot be arbitrarily denied. The District Court's failure, therefore, to allow Appellant's petition for allowance of counsels fees, failure to sign a supplemental order submitted to it and subsequent confirmation of the Auditor's report which made no mention of the allowance of attorneys fees effectively precluded Appellant from his rightful remuneration, disregarded the mandate of law and long standing practice in this jurisdiction and constituted an abuse of discretion.

2. A. It has been the custom and general rule that where there has been an order of reference to the auditor and the auditor undertakes to state an account, the auditor first submits a draft report of that account to counsel of record for all parties for the purpose of receiving their suggestions. Here the auditor did not even give Appellant notice of the hearing to state an account. Rule 47 of the District Court, applicable to claims for attorneys fees and commissions to fiduciaries, is couched in mandatory language and when the auditor undertakes to state an account it would appear that the rule applies to the auditor.

B. The Federal Rules of Civil Procedure require service of all pleadings and orders on attorneys of record in a proceeding and specifically state how service shall be made. When that service is made by mail, the strictest and most exact compliance with the rule is required. Here Appellant was not served with a copy of the order referring the case to the auditor; the notice of a hearing to state the account; and did not receive a copy of the final account prior to its being filed with the Court.

The cumulative effect of the District Court's failure to rule that Appellant should have been given such notice by the auditor as to give him an opportunity to present his claim for counsel fees and

failure to rule that orders in the proceedings below should have been served on Appellant in sufficient time to give him an opportunity to object was to deprive Appellant of his right as a member of the Bar of the District Court engaged in representing litigants before it to receive the consideration contemplated by long standing practice and rules of that Court.

ARGUMENT

I. THE DISTRICT COURT ERRED IN REFUSING TO ALLOW REASONABLE COUNSEL FEES TO COUNSEL OF RECORD FOR PROFESSIONAL SERVICES RENDERED TO THE ADMINISTRATOR IN CONNECTION WITH THE ADMINISTRATION OF HIS ESTATE

It is the practice of the District of Columbia to require that a person appearing before the Probate Court applying for Letters of Administration or for Probate and Letters Testamentary, be represented by counsel. This principle is set forth in 1 Mersch, Probate Court Practice, District of Columbia, § 361, *Necessity for Representation by Counsel in Probate Court*.

"By practice of long standing, . . . such petitioner is required to show on his petition the endorsement of counsel, and by Rule 4(a) of the rules of the District Court, which apply in probate proceedings, . . . an attorney appearing for a party who does not have an office in the District of Columbia must 'within ten days be joined of record in such appearance [by] a member of the Bar of this Court having an office in said district, in default of which the Court may strike all pleadings of such party.' By the second paragraph of Rule 4, 'no attorney may withdraw his appearance except by leave of this Court after notice served on his client.'

"The essential reason given for requiring that a fiduciary in the Probate Court have representation by counsel is that his activity there is not solely his own concern but that it is instead a fiduciary activity, involving the rights of others, which he may not be permitted to jeopardize by his own action without the advice of counsel

"The propriety, if not the exact need for representation by counsel, is recognized in the statutes which provide that the fiduciary shall, under section 20-605 (now 20-1705) be granted in his account: Fifth. His allowance of costs, attorney's fees, and extraordinary expenses which the Court may think proper to allow" (Parentheses added.)

Mersch discusses the advisability of obtaining counsel in § 363 of his work where he cautions the members of the Bar on the advisability of obtaining an Order to engage counsel for contemplated tasks "beyond routine administration of the estate", for which allowance is later to be asked for paying an attorney's fee.

3 Mersch, Probate Court Practice, District of Columbia, § 2491, *Cost of Administration and Counsel Fees*, sets forth how a fiduciary shall claim those items in his account:

"These items together constitute (with the fiduciary's commission) *the first and primary charge against the estate*, preceding even funeral expenses and estate taxes: * * * the portion of commission allowed the fiduciary based on principal assets, and the fee approved for his attorney are to be all included here." (Emphasis added)

The order of settlement of the personal estate of a deceased person in the District of Columbia was stated by Mr. Justice Morris, in *Hamilton v. Schillington*, 19 App. D.C. 268 (1902), at p. 276.

"It is well settled law, too well settled and too generally recognized to need citation of authorities in support of the proposition, that the estate of a deceased person, immediately upon his death, whether it be realty going to an heir or devisee, or personality going into the hands of an Executor or Administrator preliminary to distribution among legatees or next of kin, is charged with a lien for the payment of its debts; and this lien is paramount to all rights of heirs, next of kin, or distributees of the estate, subject only to the proviso that the costs of administration of the personality, therein and including the ordinary costs of Court and reasonable commissions to the Executor or Administrator, *are a first charge upon the personal estate and first payable out of its assets . . .*" (Emphasis added)

That counsel fees for services rendered to a fiduciary in connection with the administration of the estate are costs of administration cannot be doubted. The question of allowance of counsel fees here is as it was in the case of *Tuohy v. Hanlon*, 18 App. D.C. 225 (1901), wherein the Court was presented with the contention that counsel fees were not costs in the legal sense of the term "costs" and therefore could not be allowed from the estate. The Court, in deciding the question, referred to the Maryland Act of 1798, chapter 101, stating that Act to be the basis of all our testamentary law. At page 229, the Court said that subchapter 10, section 2 of that Act provided that an Executor or an Administrator could, in his account, have an allowance for costs and for extraordinary expenses, not personal, which the Court thought proper to allow. The Court held that reasonable attorney's fees were costs and expenses chargeable in the Probate Court as costs of administration payable if at all out of the estate in Court.

The *Tuohy* case recognized the principle that the District Court, while exercising the functions of the Probate Court, is entitled within the scope of those functions to proceed in accordance with equitable principles and procedure; that while Probate proceedings are actions at law, the Court has broad discretionary powers in the general administration of the property of the estate and those powers are closely akin to the power vested in a Court of equity in disposing of assets in its hands for distribution.

In *Hutchins v. Hutchins*, 48 App. D.C. 286, 261 F. 460 (1919), the Court in discussing the matter of awarding costs within its equitable jurisdiction cited and quoted the *Touhy* case with approval and stated at page 295:

“It also must be remembered that the grant of discretion implies the existence of a right which cannot be arbitrarily denied.”

As early as 1912 this Court held in *Howard v. Howard*, 38 App. D.C. 575 (1912), Mr. Chief Justice Shepard delivering the opinion of the Court, that a reasonable attorney's fee will be allowed to an attorney employed by an executor. At page 581 the Court said:

“We perceive no error in the allowance made for attorneys fees to the administratrix. She was entitled to the services of an attorney in winding up the estate, and there is no evidence that the services were not worth the sum allowed, or that they were exclusively for the personal benefit of the administratrix. Code Sec. 365 (31 Stat. at L. 1248, Chap. 854).”

The Code section cited above is the predecessor to Title 20, Section 1705, D.C. Code, 1967 Edition, which provides for the allowance to the executor or administrator for his costs, attorney's

fees and extraordinary expenses which the Court thinks proper to allow.

Even without the above cited code sections, the District Court has the power to do everything necessary to carry out the jurisdiction inherent in its grant of power over Probate under Title 11, Section 522, D.C. Code, 1967 Edition, including the power to pass on compensation to officers of the Court. As this Court said in *Guthrie v. Welch*, 24 App. D.C. 562 (1905) at p. 566, discussing the jurisdiction conferred upon the Probate Court "... it must be assumed that every court has all the authority necessarily implied in the act of its creation".

The District Court failed to rule on Appellant's Petition for Allowance of Counsel Fee and refused to sign the Supplemental Order thereon submitted by Appellant.

Therefore, the District Court erred in refusing to allow Appellant attorneys fees for the services he rendered to the estate.

II. THE DISTRICT COURT ERRED IN FAILING TO RULE THAT COUNSEL OF RECORD FOR THE ADMINISTRATOR SHOULD HAVE BEEN GIVEN SUCH NOTICE BY THE AUDITOR AS TO GIVE HIM AN OPPORTUNITY TO PRESENT HIS CLAIM FOR FEES TO THE AUDITOR; AND THAT ALL ORDERS SHOULD HAVE BEEN SERVED ON SAID ATTORNEY OF RECORD IN SUFFICIENT TIME TO GIVE HIM AN OPPORTUNITY TO OBJECT

A. The District Court Erred in Failing to Rule That Counsel of Record for the Administrator Should Have Been Given Such Notice by the Auditor as to Give Him an Opportunity to Present His Claim for Counsel Fees

Appellant's Exception to the Auditor's Report and Petition For Allowance of Counsel Fee (App. 5 - 9) excepted to the auditor's report in part because Appellant received no notice of the hearing before the auditor for the statement of an account. Paragraph V, 28 U.S.C.A. Federal Rules of Civil Procedure, Rule 53, governing the auditor's actions following an order of reference states:

"Before filing his report a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions."

It has been the practice of the Auditor, United States District Court, to submit draft reports to counsel of record for all parties concerned for the purpose of receiving their suggestions prior to submitting the report to the Court. 21 Am. Jur. 2d, Customs and Usages, § 2 defines a custom as a practice which by reason of a general long and established uniform usage has acquired the full force and effect of law. That Section goes on to say that a usage which has been in existence for a long period without receiving censure from the Court or legislative bodies possesses the force of law. In the 33 some years Appellant has been representing estates and

fiduciaries in this jurisdiction it has been the custom and general rule that where there has been an order of reference to the auditor and the auditor undertakes to state an account, the auditor first submits a draft report of that account to counsel of record for all parties for the purpose of receiving their suggestions. Appellant relied on that custom here. Certainly, where the rights of counsel of record are affected, the auditor should not depart from his usual and general practice of submitting such a draft report.

In *Magruder v. Drury*, 37 App. D.C. 519 (1911) rev'd on other grounds, 35 S. Ct. 77, 235 U.S. 106, 59 L. Ed. 151, an appeal from an order denying exceptions to the auditor's report, Mr. Chief Justice Shepard stated at page 538:

"The commissions allowed in this case being within the power of the auditor, it was his *duty* to determine from the evidence before him regarding the character of the services performed by the trustees, what would be a reasonable and fair compensation therefor." (Emphasis added.)

Here, the auditor did not even give Appellant notice of his hearing to state an account thereby depriving Appellant of his opportunity to present his claim for attorneys fees.

Rule 47 of the U.S. District Court Rules provides:

"Claims for attorney's fees and commissions to fiduciaries *shall* be made and *allowed* in accordance with the provisions of Sections 20-605 and 21-126 of the District of Columbia Code (1951)." (Emphasis added.)

The above cited code section applicable, (Sec. 20-605), is now 20-1705 D.C. Code, 1967 Edition.

The wording of that rule is mandatory and when the auditor prepares the account it would appear that the rule applies with equal force to the auditor.

B. The District Court Erred in Failing to Rule That Orders in the Proceedings Below Should Have Been Served on the Appellant, Attorney of Record for the Administrator, in Sufficient Time to Give Appellant an Opportunity to Object.

28 U.S.C.A., Federal Rules of Civil Procedure, Rule 5(a), provides:

"Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the Court otherwise orders because of numerous defendants, every written motion other than one which may be heard ex parte, and every written notice, appearance demand, offer of judgment, designation of record on appeal, and similar papers *shall* be served upon each of the parties." (Emphasis added.)

Paragraph 5(b) of that Rule states how service shall be made and when service is to be made by mail, the strictest and most exacting compliance with the Rule is required.

The purpose of the Rule is stated in *Bowers v. E. J. Rhodes Mfg. Co.*, 149 F.2d 612, cert. den., 66 S. Ct. 91, 326 U.S. 753, 90 L.Ed. 451 (C.C.A. Cal. 1945), wherein the Court stated that purpose to be to prevent unconscionable default where a once known address is succeeded by a later one to which the sender knows the addressed party has moved.

Appellant informed the Auditor's Office, U.S. District Court, of his change of address and some pleadings in this cause were sent

to Appellant's new address. However, Appellant never received a copy of the order referring this case to the auditor or notice of a hearing to state an account. On August 7, 1968, Appellant received a copy of the report of the auditor which contained an account and a notice of its filing with the Court on August 6, 1968 (App. 10-21) which had been sent to his old address. Clearly, failure to serve Appellant with a copy of the order referring the case to the auditor and failure to serve Appellant with notice of a hearing to state an account and failure to serve Appellant with a copy of the final account prior to its being filed with the Court was in violation of the rule set out above.

CONCLUSION

The orders appealed from should be reversed, with direction to grant Appellant's Exception to the Auditor's Report and Petition for Allowance of Counsel Fee.

Respectfully submitted,

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APPELLANT'S REPLY BRIEF

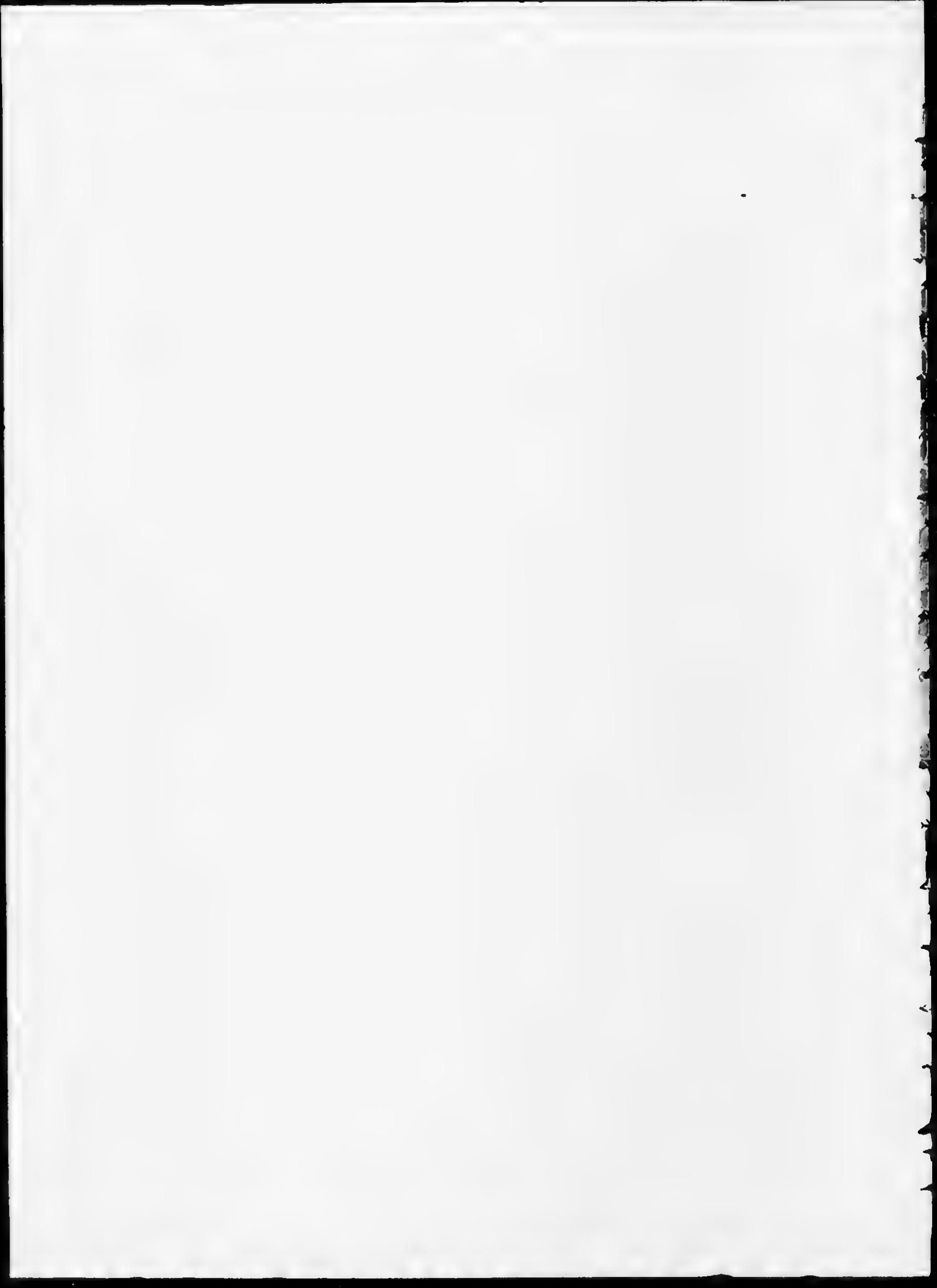
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APPELLANT'S REPLY BRIEF

Appellee, the District of Columbia, misconceives the issue and,
in part, misstates the facts.

Appellant did not ask the Trial Court to award an additional
sum to cover his fee. And counsel did not, in response to question

from the court below, reply that he was not asking that his fee be taken out of the sum awarded the administrator. Counsel did reply that he would not ask the court to cut the administrator's commission as that would be somewhat disloyal to his client (App. 43). There was no requirement upon the Trial Court as is implied in the appellee's brief to allow counsel fees in addition to the administrator's commissions allowed.

Appellee, the District of Columbia, states in his brief at page seven:—

"The auditor recommended that, because of this new development, (referring to the fact that the administrator had been adjudicated incompetent), and because Mr. Partridge apparently no longer represented the administrator, the court appointed a guardian ad litem to represent the administrator in the proceedings before the auditor." (Parentheses added.)

The District of Columbia has misstated the facts. The auditor's report states:—

"While the record reflects that Daniel Partridge, III, Esq., is attorney of record for the administrator, he has been unable to obtain the cooperation of his client for a number of years. He did not appear at the meetings and hearings before the auditor because of this fact." (App. 29).

The fact that appellant became inactive in the cause is no justification for denying him fees for services performed prior to becoming inactive.

The District of Columbia has alleged that appellant's only evidence submitted in support of his claim for attorneys fees is an unverified statement. Again, the District of Columbia is mistaken.

Appellant's Exceptions to the Auditor's Report and Petition for Allowance of Counsel Fee (App. 5 - 9) is sworn to before a notary public in and for the District of Columbia. That pleading specifically refers to and incorporates by reference the statement of services signed by the appellant attached thereto.

Appellant recognizes that the practice of law should not be regarded as a money getting trade; and that all attorneys should donate some services to those unable to pay, *pro bono publico*. It is of considerable importance to the public, the register of wills office and to the courts that estates should be represented by attorneys learned in the law to the end that the settlement of the estates shall be facilitated and the judicial and the administrative burdens of the public officials involved be decreased. But in estate cases where funds are available for the payment of counsel fees without depriving any needy person of necessary living expenses, there is no moral duty on an attorney to donate his services. An attorney must receive reasonable compensation for some of his services in order to survive.

The statute under which judgment was given for the District of Columbia against the administrator for the cost of decedent's care at St. Elizabeth's Hospital is D.C. Code Sec. 20-502 (1961), now D.C. Code § 20-1502 (1967) which states in part:—

“* * * When it appears to the court that there are not sufficient assets to discharge all just claims against the deceased, the judgment shall be for such sum only as bears a just proportion to the amount of the debt or damages and cost, regard being had to the amount of *all* the just claims and of the assets.” [Emphasis added.]

That statute recognizes that even in an estate not of sufficient size to discharge all claims, the claim of the District of Columbia, a

claim of an eleemosynary institution, is of no higher stature than the claims of other creditors.

Appellant is merely asking for his fee for services rendered, not for extraordinary fees and not for fees to be paid at the deprivation of any needy person.

It follows that the orders appealed from should be reversed with direction to grant appellant's Exception to the Auditor's Report and Petition for Allowance of Counsel Fee.

Respectfully submitted,

ROBERT M. GANTS
SHARP, PARTRIDGE, GANTS & PERKINS
1108 - 16th Street, N.W.,
Washington, D.C.
Attorney for Appellant



BRIEF FOR APPELLEE

UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

No. 22,498

DISTRICT OF COLUMBIA

v.

WILSON C. WARREN, Administrator of the Estate of
Matilda I. Ratcliffe, Deceased, Adm. No. 107194,

DANIEL PARTRIDGE, III,

Appellant

NO. 22,499

IN RE: ESTATE OF MATILDA I. RATCLIFFE, Deceased,
DISTRICT OF COLUMBIA,

v.

WILSON C. WARREN, Administrator of the Estate of
Matilda I. Ratcliffe, Deceased, Adm. No. 107194,

DANIEL PARTRIDGE, III,

Appellant.

Appeal From The United States District Court
For The District Of Columbia

United States Court of Appeals
for the District of Columbia Circuit

FILED APR 7 1969

Nathan J. Paulsen
CLERK

CHARLES T. DUNCAN,
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HUBERT B. PAIR,
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RICHARD W. BARTON,
Assistant Corporation Counsel, D.C.
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COUNTER-STATEMENT OF ISSUE PRESENTED

Whether the trial court, after having awarded the administrator the maximum statutory commission for administering the estate, erred in refusing to award an additional sum to cover the fee which the administrator purportedly contracted to pay his attorney for assisting him in the routine administration proceedings.

This case, involving an unrelated question, was previously before this Court under the title of Warren v. District of Columbia, No. 19, 178.



I N D E X

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UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

No. 22, 498

DISTRICT OF COLUMBIA,
v.
WILSON C. WARREN, Administrator of the Estate of
Matilda I. Ratcliffe, Deceased, Adm. No. 107194,
DANIEL PARTRIDGE, III,
Appellant.

No. 22, 499

IN RE: ESTATE OF MATILDA I. RATCLIFFE, Deceased,
DISTRICT OF COLUMBIA,
v.
WILSON C. WARREN, Administrator of the Estate of
Matilda I. Ratcliffe, Deceased, Adm. No. 107194,
DANIEL PARTRIDGE, III,
Appellant.

Appeal From The United States District Court
For The District Of Columbia

BRIEF FOR APPELLEE

COUNTER-STATEMENT OF THE CASE

The Pleadings

Appellant Daniel Partridge, III, an attorney, was retained by Wilson C. Warren, administrator of the estate of Matilda I. Ratcliffe, to assist him in administering the estate. Some years later, the

estate not having been closed, the auditor of the District Court, upon motion of the District of Columbia, was ordered to state the final account and to ascertain the sum available to satisfy the District of Columbia's claim. The auditor recommended that the administrator be awarded a commission of ten per cent of the gross assets of the estate, and that the remainder, except for two small sums, be paid the District of Columbia as partial settlement of its claim. The auditor made no recommendation respecting any fee to Mr. Partridge (A. 10, 17).

Mr. Partridge filed "Exceptions to Auditor's Report and Petition for Allowance of Counsel Fee," wherein he sought " * * * a reasonable counsel fee for his services as attorney for the administrator in the Estate of Matilda I. Ratcliffe; and reimbursement for out-of-pocket expenses amounting to \$3.10" (A. 5). Following a hearing on the exceptions and petition, the court, on September 13, 1968, overruled the exceptions (A. 33), and on September 30, 1968, entered its order ratifying and confirming the report of the auditor, and directing that distribution be made in accordance with the auditor's recommendations (A. 33). On October 11, 1968, Mr. Partridge noted an appeal from these rulings. He also filed in this Court an application for a writ of mandamus to compel the District Court judge to sign a supplemental

order, submitted by Mr. Partridge, specifically denying his "Petition for Allowance of Counsel Fee," or, in the alternative, that this Court rule that the orders of September 13, 1968 and September 30, 1968 are final and appealable. This Court, on December 4, 1968, ordered that consideration of the application for a writ of mandamus be held in abeyance for consideration by the division assigned to hear argument on the merits of the appeal.

The Facts

At the hearing on the "Exceptions to Auditor's Report and Petition for Allowance of Counsel Fee," Mr. Partridge, in response to the court's question as to what arrangements he had with the administrator respecting representation, testified:

"I told Mr. Warren what I thought the commissions on this very small estate would be and suggested that I receive for administering the estate about \$200 and that we have from the administration commission about \$120. This is all correspondence that I received over in Baltimore. He wrote me back to the effect that he thought that the commissions should be divided fifty-fifty, one-half to each of us. And I wrote back and also talked with him over the telephone to the effect that if after the administration of the estate, if he as a fair minded man felt we ought to divide the commission half and half, that I would accede to that. But I felt at that time that when the administration was complete, considering it

would be a very simple administration at that time, that he would know that I would have done all the work and that he would have done very little of it." (A. 41.)

Later in the hearing, the court inquired:

"So what you want the Court to do is to cut the administrator's commission and allow you a counsel fee within the ten per cent limitations of the statute? Is that correct?"

Mr. Partridge replied:

"Well, I don't ask the Court to cut the administrator's commission. That would be somewhat disloyal to my client. But I do ask that I be allowed a counsel fee * * *" (A. 43).

The record shows that shortly after Mr. Partridge was retained by the administrator in September of 1962, friction developed between them. Although Mr. Partridge never formally withdrew from the case, he did not participate in any of the proceedings in any manner whatsoever after 1964. When the administrator denied the claim of the District of Columbia for expenses incurred on behalf of the decedent at St. Elizabeths Hospital, and the District instituted suit against the administrator in the court below to recover such expenses, it was the administrator who, in proper person, in April of 1964, answered the complaint. It was the administrator also who, in proper person, filed a written opposition to the District's motion for summary

judgment in that case. At the hearing on the motion for summary judgment, the administrator again appeared in proper person, but the court permitted his friend, Alexander W. Spedden, Jr., Esquire, of Baltimore, Maryland, to argue the motion. Thereafter the administrator came to regard Mr. Spedden as his counselor in all matters regarding the administration of the estate. Mr. Spedden perfected the appeal from the adverse judgment on the District's claim, and, on remand, represented the administrator in the proceedings before the District Court auditor.¹

Upon remand of the case, it was the Corporation Counsel who moved the District Court for an order of reference to the auditor for the purpose of stating the final account of the administrator and for entry of judgment in favor of the District in accordance with the judgment of this Court. It was represented in the motion that:

"During the four-year period in which this estate has been open, the Administrator has filed only two accounts. The restated second account filed December 9, 1966, reflected for future accounting a cash

¹ The purpose of the remand was for entry of judgment for the District of Columbia in accordance with the provision of D. C. Code, § 20-502 (1961), now D. C. Code, § 20-1502 (1967), rather than for the amount of the debt, which exceeded the assets of the estate.

balance of \$2, 571. 67 and miscellaneous personal property valued at \$13. 00. Although requested by the Register of Wills to terminate the estate, the Administrator has failed and refused to do so and there is no justification whatsoever for holding this estate open for future accounting."

Following the granting of the motion, the auditor sent a notice to counsel of record, including Mr. Partridge, that, on a specified date, " * * * there will be a Meeting of Counsel for the purpose of considering the execution of the Order of Reference * * *" (A. 20). Mr. Partridge, in his written reply to the auditor, stated that it would be useless for him to attend, that the administrator has been unwilling to follow his advice for a number of years, and that unless Mr. Partridge received some further request to be present he would not attend (A. 26).

According to the preliminary report of the auditor, Mr. Partridge did not attend the meeting, but Mr. Spedden did, and Mr. Spedden informed the auditor that the administrator had been adjudicated incompetent on January 16, 1968, in Baltimore, Maryland. The auditor recommended that, because of this new development, and because Mr. Partridge apparently no longer represented the administrator, the court appoint a guardian ad litem to represent the administrator in the proceedings before the auditor (A. 27, 29). The court thereupon appointed Hamilton W. Kenner, Esquire, to represent the administrator

in the proceedings before the auditor (A. 32). The auditor, in his subsequent report, stated that Mr. Kenner had negotiated with the financial institution holding the assets of the estate and, as a result of his efforts, the financial institution was willing to make distribution of such assets without the necessity and expense of appointing an administrator de bonis non (A. 18). Distribution has been held in abeyance pending the disposition of this appeal.

STATUTE INVOLVED

"§ 20-1705. Disbursements and allowances

"On the other side of the account the executor or administrator shall state the disbursements made by him, and debts and allowances, as follows:

* * * *

"(5) the commissions of the executor or administrator, which shall be, at the discretion of the court, not under one per centum nor exceeding ten per centum on the amount of the inventories, excluding what is lost or has perished; and

"(6) the allowance to the executor or administrator for his costs, attorney fees, and extraordinary expenses which the court considers proper to allow."

ARGUMENT

The fees for administering the estate were
properly limited to ten per cent of the
gross assets of the estate.

The substance of Mr. Partridge's contention on appeal is that he is entitled to a fee for legal services rendered the administrator in connection with the administration of an estate. Nowhere in his brief, however, does he set forth the legal basis for his claim.

Mr. Partridge, according to his own testimony, entered into an oral contract with the administrator whereby each was to receive a certain portion of the commission which would be awarded for administering the estate (A. 41-42). Mr. Partridge, however, did not ask the court below to assist him in enforcing this contract whereby he would obtain his share of the maximum commission which was awarded the administrator. On the contrary, he specifically stated, in response to a direct question from the court, that he was not asking that his fee be taken out of the sum awarded the administrator (A. 43). He has, therefore, clearly waived his right to recover from the only party who could possibly be liable for the counsel fees.

It is recognized, of course, that a court may, upon a proper application and showing by an administrator, allow him an amount over and above the maximum statutory commission in order that he

may compensate his attorney for unusual services rendered. Here, however, the administrator is not seeking an additional sum. Furthermore, no showing has been made by anyone, including Mr. Partridge, that the administration of this estate presented any unusual difficulties. Such a showing is a condition precedent to the granting of additional compensation to the administrator. Gliem v. District of Columbia, 110 U. S. App. D. C. 118, 289 F. 2d 784 (1961). See also Hamilton v. Shillington, 19 App. D. C. 268 (1902).

It is apparent from Mr. Partridge's unverified statement, which was the only evidence submitted in support of his claim, that such services as he initially rendered the administrator in connection with administration of the estate were merely routine, payment for which would ordinarily be made by the administrator out of the normal commission awarded. His statement also relates the efforts he made to effect an understanding with the administrator respecting how the estate would be administered (A. 8). The creditors of the estate, however, should not be required to underwrite the expenses of such a personal feud. As this Court stated in Hamilton v. Shillington, supra, at pages 277 and 278,

" * * * Now, assuredly there can be no warrant of law, or of reason, or of common sense, to require one man to pay the costs of the litigation

of two other men, with which he has no connection whatever, other than the unfortunate connection, that, in the fund for which they are contending, he has a claim paramount to each and both of them, but which he cannot have satisfied until their litigation has been settled."

Mr. Partridge has devoted a substantial portion of his brief to a complaint that the auditor of the court below failed to keep him properly advised of the proceedings before him. The argument in this regard is so specious as to hardly require a response. The record shows that, as soon as the matter was referred to the auditor for the purpose of stating the final account of the administrator and ascertaining the sum available to satisfy a portion of the District's claim, the auditor informed all interested persons, including Mr. Partridge, of a forthcoming meeting to carry out the court's order of reference. Mr. Partridge, instead of attending the meeting, wrote the auditor that the administrator had been unwilling to follow his advice for a number of years, and that it would be useless for him to attend (A. 26). Because of this attitude, the auditor found it necessary to recommend to the court that a guardian ad litem be appointed for the administrator who, by this time, had been adjudicated incompetent by a court in Baltimore, Maryland (A. 27).

Mr. Kenner was appointed guardian ad litem and, through his efforts, the matter was about to be resolved without the necessity of

the appointment of an administrator de bonis non (A. 10, 18, 32). Upon the filing of the auditor's report, the interest of Mr. Partridge in the case, which had been nonexistent for approximately four years, became revitalized to the extent of seeking compensation for services rendered the administrator years before.

Even if it be assumed that Mr. Partridge did not receive timely notice of all proceedings before the auditor in the short interim between Mr. Partridge's written notification indicating a complete lack of interest in the case and the filing of the auditor's report, no showing has been made that he was prejudiced thereby. Mr. Partridge makes no assertion that the auditor's report is factually inaccurate, and certainly the recommendations contained therein were not binding on the court. Furthermore, any inadequacies regarding notice of proceedings before the auditor, if any such inadequacies existed, were cured when Mr. Partridge availed himself of a full and complete hearing before the court.

Pending also before this Court is Mr. Partridge's application for a writ of mandamus to compel the court below to sign a supplemental order specifically denying the "Petition for Allowance of Counsel Fee," or, in the alternative, that this Court rule that the orders signed by the court below are final and appealable. The orders

signed by the court below, and from which this appeal has been taken, disposed of everything properly before the court and are, therefore, final and appealable. The court properly refrained from signing the supplemental order, because the proposed order would dispose of Mr. Partridge's contractual rights against the administrator, which Mr. Partridge specifically conceded were not a subject of litigation in the administration proceedings. Consequently, the relief requested in the application should be denied.

The District of Columbia has been diligent in pursuing its rights throughout this case. Because of unnecessary litigation, the small amount originally available in the estate to satisfy a portion of the debt owing the District has been substantially decreased. This protracted matter should be terminated forthwith.

CONCLUSION

In view of the foregoing, it is respectfully submitted that the judgment of the court below should be affirmed, and that the application for a writ of mandamus should be denied.

CHARLES T. DUNCAN,
Corporation Counsel, D. C.

HUBERT B. PAIR,
Principal Assistant Corporation
Counsel, D. C.

RICHARD W. BARTON,
Assistant Corporation
Counsel, D. C.

JOHN R. HESS,
Assistant Corporation
Counsel, D. C.

Attorneys for Appellee,
District Building,
Washington, D. C. 20004

April 7, 1969

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,498
DISTRICT OF COLUMBIA

v.

WILSON C. WARREN, Administrator of the Estate of Matilda
I. Ratcliffe, Deceased, Administration No. 107194

DANIEL PARTRIDGE, III

Appellant

No. 22,499
IN RE: ESTATE OF MATILDA I. RATCLIFFE, Deceased,
DISTRICT OF COLUMBIA,

v.

WILSON C. WARREN, Administrator of the Estate of Matilda
I. Ratcliffe, Deceased, Administration No. 107194

DANIEL PARTRIDGE, III

Appellant

On Appeal from Orders of the United States
District Court for the District of Columbia

JOINT APPENDIX

United States Court of Appeals
for the District of Columbia Circuit

FILED MAR 24 1969

Mary J. Paulson



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CIVIL DOCKET

United States District Court for the District of Columbia

DISTRICT OF COLUMBIA,a municipal corporation

Number

731-64v.WILSON C. WARREN,Administrator of the Estate of
MATILDA I. RATCLIFFE, Deceased

DATE	PROCEEDINGS	731-64
1964	Deposit for cost by	
Mar. 25	Complaint, appearance	filed
Mar. 25	Summons copies (1) and copies (1) of Complaint issued ser 3-26-64	
April 15	Answer of defendant to complaint; c/m 4-14-64; appearance Wilson C. Warren, Pro Se.	filed
April 15	Calendared (N) (AC/N)	
Oct 6	Called.	Asst Pretrial Examiner
Nov 6	Motion of pltf for summary judgment; P&A; statement; affidavits (2); c/m 11/6/64; MC 11/6/64.	filed
Nov 25	Reply of deft to motion for summary judgment; affidavit; exhibit; c/m 11/20/64.	filed
Dec 14	Motion of pltf for summary judgment argued and taken under advisement. (Rep Sanchez)	Tamm.J.
Dec 31	Order granting motion of pltf for summary judgment; judgment for District of Columbia for \$31,860.30 vs Wilson C. Warren, Administrator. (N)	Tamm.J.
1965 Jan 8	Notice of appeal by deft from order 12/31/64. Deposit \$5.00 by Warren. Copy mailed to Albert S. Povich.	filed
Jan 8	Cost bond on appeal by pltf in sum of \$250.00 with Fidelity & Deposit Co. of Maryland, approved.	filed
Feb 15	Record on appeal delivered to USCA. Deposit by Warren \$.80.	
Feb 15	Receipt from USCA for original papers.	filed
Apr 15	Transcript of proceedings 12/14/64, pp 1-10. (Rep Sanchez) (Court's copy)	filed
Aug 11	Certified copy judgment USCA remanding cause to USDC for entry of judgment in accordance with provisions of D. C. Code.	filed
Sep 30	Receipt of original record from USCA.	filed
1967		
Apr. 21	Called.	Asst. Pretrial Examiner

Jul.	28	Motion of pltf for order of reference to auditor; c/m 7-28; exhibit: M.C.	filed
✓	Aug 28	Order granting motion for reference to Auditor; entering judgment for pltf upon filing of final account and approval thereof. (N) Auditor: Curran, J.	
<u>1968</u>			
✓	Apr 10	Preliminary report of the Auditor. (N)	filed
	Apr 18	Appearance of Alexander W. Spodden, Jr., for defendant and Committee; c/m 4/17/68. AC/N	filed
✓	Aug 7	Copy of auditor's report filed in Admin. #107,194, and notice. filed	
✓	Aug 13	Exception by deft. to auditor's report; petition for attorney's fee; c/m 8-13; statement; M.C.	filed
	Aug 20	Appearance of Thomas R. Nedrick; N/AC.	filed
✓	Aug 20	Answer of pltf. to exceptions to auditor's report and allowance of counsel fee; c/m 8-20; exhibit.	filed
✓	Sep 13	Order overruling Exception to auditor' report and petition for allowance of counsel fee. (Orig. filed in Adm. 107,194) Robinson,	
✓	Sep 30	Order ratifying report of auditor filed August 6, 1968; entering judgment for District of Columbia vs Wilson Warren, Administrator for \$2,241.55; authorizing distribution of balance of assets; discharging fiduciary and surety upon filing certificate of distribution. (N)	Robinson, J.
Oct	11	Notice of Appeal, filed	

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA
PROBATE COURT

Admn. No.
1G7194

Estate of Matilda I. Ratcliffe, Deceased

Date	Procedures
1962	
Nov. 13	Petition of Wilson C. Warren for letters of administration, filed.
" 28	Waivers and consents of three heirs-at-law, filed.
" 29	Order granting letters of administration to Wilson C. Warren. Undertaking - \$4,000.00.
Dec. 11	Oath of administrator.
"	Power of attorney from Wilson C. Warren to the Register of Wills, filed.
12	Order re-appointing administrator after an undertaking. Consent of surety.
12	Undertaking executed.
"	Undertaking approved and letters issued. Undertakings # 175 folio 519
"	Order for publication against creditors in The Washington Law Reporter and The Evening Star.
"	Notice to creditors issued. Return day - June 12, 1963.
1963	
Feb. 27	Notice to administrator of citation to issue for an inventory of money and debts.
Mar. 13	Inventory of money and debts, filed.
June 17	Additional inventory of money and debts, filed.
Oct. 31	Proof of publication against creditors in The Evening Star, filed.
Nov. 29	Notice to administrator to file an account.
Dec. 20	Sworn statement for an account and vouchers, filed.
1964	
Feb. 4	Amended sworn statement for an account and vouchers, filed.
" 8	Proof of publication against creditors in The Washington Law Reporter, filed.
Mar. 3	Carbon copy of letter from Wilson C. Warren to the D.C. Government, rejecting claim in the amount of \$31,860.03, filed.
" 26	Summons and complaint served on the Register of Wills at attorney-in-fact under title 20-118, D.C. Code of 1961, mailed to fiduciary by registered mail this date.
"	Carbon copy of accompanying letter mailed to attorney of record.
Oct. 23	Re-stated first account of administrator approved and passed. Accts. # 744 folio 516
Dec. 2	Notice to administrator to file an account.
" 10	Sworn statement for an account, filed.
1965	
Dec. 9	Sworn statement for an account and vouchers, filed.
1967	
July 26	Motion of the District of Columbia, by its attorneys, for order of reference to the Auditor and for entry of judgment, filed with exhibit and certificate of service
Aug. 26	Order granting motion for order of reference to auditor; further referring cause to Auditor for purpose of stating final account of administrator, and ascertaining the sum available for which judgment in favor of District of Columbia may be entered; and further, upon filing of final account, a judgment in favor of District of Columbia be entered against Wilson C. Warren, to the extent of assets available for said judgment.
	Certificate of mailing.

App. 4

1968		
Apr.	10	Preliminary Report of the Auditor, filed with notice of filing.
June	26	Order appointing Hamilton W. Kenner guardian ad litem of incompetent.
Aug.	1	Certificate in re inheritance taxes, filed.
✓	6	Report of the Auditor and notice of filing
✓	13	Exceptions of Daniel Partridge, III to auditor's report and petition for allowance of counsel fee filed with statement of service and certificate of mailing.
✓	20	Pracceipe of Thomas R. Nedrich entering his appearance as attorney for the District of Columbia, filed.
Aug.	20	Answer of the District of Columbia to the exceptions to auditor's report and petition for allowance of counsel fee, filed with certificate of mailing.
Sep.	13	Order overruled execiption to auditor's report and petition for llowance of causel fee. Docketed September 18, 1968 .
Oct.	11	Order ratifying and confirming the report of the auditor and further ordered judgment in favor of the District of Columbia and against Wilson Warren, in the amount of \$2,241.55 and further that certain the balance be distributed in accordance with recommendations in the report of the auditor ,etc. (signed September 30, 1968) Docketed October 11, 1968)
Oct	11	Notice of Appeal, filed

FILED

[Caption Omitted in Printing]

AUG 13 1963

EXCEPTIONS TO AUDITOR'S,
REPORT AND PETITION FOR
ALLOWANCE OF COUNSEL FEE

Daniel Partridge, III, counsel for Wilson C. Warren, Administrator of the Estate of Matilda I. Ratcliffe, Deceased, objects and excepts to the report of the auditor filed in the above-entitled causes August 6, 1968 upon the grounds that the account of the administrator stated in said report does not include any allowance to this counsel for his attorney's fee for representing the administrator in the administration of the estate; and that no notice was given this counsel of the hearings before the auditor for the statement of the account and his first opportunity to object was on August 7, 1968 when he received a copy of the report as filed.

The Petition of Daniel Partridge, III respectfully represents to this Honorable Court:-

1. That he is a member of the bar in good standing, in active practice in the District of Columbia and has been in active practice in the District of Columbia since October of 1929; and that in 1962 when he was retained to represent the administration of the Ratcliffe estate, he had been representing fiduciaries of estates and acting as fiduciary of estates for about 33 years.

2. That your petitioner was retained by Wilson C. Warren to represent him in the supervision of the committeeship of his aunt, Matilda I. Ratcliffe; that shortly after Miss Ratcliffe's death on September 22, 1962, your petitioner was retained by Mr. Warren to represent him in the administration of Miss Ratcliffe's estate.

3. That your petitioner represented Mr. Warren in the preparation and filing of the petition for letters of administration and performed the ser-

vices set forth in the statement of services hereto annexed and specifically referred to and made a part hereof; and advanced costs amounting to \$3.10 for two long distance calls to Mr. Warren in Baltimore, Maryland for which he has never been reimbursed; that during the course of the attempted administration of the estate Mr. Warren refused to follow your petitioner's advice on a number of occasions and your petitioner was unable to get Mr. Warren to file a final account showing distribution of the net assets of the estate to the District of Columbia as your petitioner advised him to do; that between September 27, 1962 and December 4, 1964 your petitioner spent 14.90 recorded hours of legal services regarding the administration of the estate; that the recorded time is less than the actual time spent; that after December, 1964 your petitioner spent additional time and estimates that the time he spent on estate matters as attorney for the administrator to be 18 hours; that many of these matters were extremely difficult and required a high degree of knowledge and skill because of the impossibility of obtaining the cooperation of Mr. Warren in the administration of the estate; and that if Mr. Warren had followed your petitioner's advice, he would not have had to come to the District of Columbia at all and the administration of the estate would have been a relatively simple administration, completed in the latter half of 1963.

WHEREFORE, the premises considered, your petitioner prays:-

I. That he be allowed a reasonable counsel fee for his services as attorney for the administrator in the Estate of Matilda I. Ratcliffe; and

II. And for such other and further relief as to the Court may seem meet and proper.



Daniel Partridge, III, Petitioner

Sharp, Partridge, Gants & Perkins

By Daniel Partridge III

Sharp, Partridge, Gants & Perkins
1108 16th Street, N.W.
Washington, D.C. 20036
ST 3-0621

Attorneys for Petitioner

DISTRICT OF COLUMBIA, ss:

I, Daniel Partridge, III, being first duly sworn on oath, depose and say that I have read the foregoing Petition by me subscribed and know the contents thereof; that the matters stated therein upon my personal knowledge are true, and those stated upon information and belief, I believe to be true.

Daniel Partridge III
Daniel Partridge, III

Subscribed and sworn to before me this 13th day of August, 1968.

Anna Jean Shockey
Notary Public, D.C.

My Commission Expires Jan. 31, 1971

NOTICE

To: Mr. Wilson C. Warren
1903 Gwynne Oak Avenue
Baltimore, Maryland

Peerless Insurance Company
705 North St. Asaph Street
Alexandria, Virginia

Albert S. Povich, Esq.
Assistant Corporation Counsel, D.C.
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Washington, D.C. 20001

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910 17th Street, N.W.
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Alexander W. Spedden, Jr., Esq.
755 Edgewood Street
Baltimore, Maryland

Gentlemen:

Please take notice that the foregoing Exceptions to Auditor's Report and Petition For Allowance of Counsel Fee is now being filed and will be brought

to the attention of the Court on the 12th day of September, 1968. You are requested to file any answer you may have to the exceptions and objections to the granting of the prayers of the petition before this date.

Daniel Partridge III
Daniel Partridge, III

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Exceptions to Auditor's Report and Petition for Allowance of Counsel Fee and Notice, hereto annexed, were mailed, postage prepaid, to all of the persons named in said Notice at their addresses set forth after their names on the 13th day of August, 1968.

Daniel Partridge III
Attorney for Petitioner

FILED

STATEMENT OF SERVICES

4UG 13 1968

Numerous conferences including telephone conferences with Mr. Wilson C. Warren; telephone conferences with Joseph J. Lyman, Esq., Committee for Miss Ratcliffe; preparing petition for letters of administration, correspondence and telephone conferences with Mr. Warren in regard to the same and telephone conferences with Mr. Frank Burkhardt regarding the same; preparing and transmitting copy of petition and waiver and consent to eight heirs-at-law and next-of-kin; preparing and presenting order granting administration; transmitting general undertaking, oath, non-resident power of attorney and notice to creditors to Mr. Warren and correspondence with him regarding the same; preparing and presenting order confirming grant of administration and reappointing administrator (necessary because of Mr. Warren's failure to return qualifying papers on time); arranging for collection of money on deposit with St. Elizabeths Hospital and assets of Committeeship; advice to Mr. Warren regarding his desire to move assets of the estate from the District of Columbia and discussion with him regarding the elimination of joint control over those assets; correspondence with the District of Columbia regarding their probated claim; correspondence and conferences with Mr. Warren regarding the preparation and filing of a first and final account; preparing and

transmitting to Mr. Warren a form of amended first and final account; procuring and filing proof of publication against creditors; conference Theodore Cogswell, Esq. re failure to file an account and possible removal of administrator and correspondence and telephone conferences with Mr. Warren regarding the same; conference with appraiser's office regarding appraisal of ring and watch; legal research regarding the validity of the claim of the District of Columbia and conferences with and advice to Mr. Warren regarding the same; conferences and advice regarding reimbursement of Mr. Warren's expenses and telephone conferences with Miss Sappe of Register of Wills Office regarding estate.

Daniel Pashayoff

Dated: August 13, 1968

[Caption Omitted in Printing]

FILED

O R D E R

AUG 28 1967

Upon consideration of the motion of the District of Columbia for an order of reference to auditor to state final account and for entry of judgment filed herein, and it appearing to the Court that no opposition has been filed thereto, it is, by the Court, this 28th day of August 1967,

ORDERED: That the motion for order of reference to auditor to state final account and for entry of judgment be, and the same hereby is, granted, and it is

FURTHER ORDERED: That this cause be referred to the auditor of this Court for the purpose of stating the final account of Wilson C. Warren, Administrator, and ascertaining the sum available for which judgment in favor

of the District of Columbia may be entered in accordance with Section 20-1502, D. C. Code, 1961 ed., Supp. V., and it is

FURTHER ORDERED: That upon the filing of the final account and approval thereof by the Court, a judgment in favor of the District of Columbia be entered against Wilson C. Warren, to the extent of the assets available for said judgment.

J. Donald Wessan

JUDGE

I hereby certify that a copy ~~of the~~ of the foregoing order was mailed, postage prepaid, to Wilson C. Warren, 1903 Gwynne Oak Avenue, Baltimore, Maryland, this 11th day of August, 1967.

Albert S. Povich
ALBERT S. POVICH
Assistant Corporation Counsel, D. C.

FILED

AUG 6 1967

REPORT OF THE AUDITOR

To the United States District Court for the District of Columbia:

The undersigned Auditor, John W. Follin, for report to the Court in the above-entitled proceedings, respectfully states as follows:

1. This matter is before the Auditor pursuant to two Orders of Reference dated August 28, 1967, in the above-captioned matters. The two Orders of Reference, which are identical, read as follows:

"Upon consideration of the motion of the District of Columbia for an order of reference to auditor to state final account and for entry of judgment filed herein, and it appearing to the Court that no opposition has been filed thereto, it is, by the Court, this 28th day of August, 1967,

"ORDERED: That the motion for order of reference to auditor to state final account and for entry of judgment be, and the same hereby is, granted, and it is

"FURTHER ORDERED: That this cause be referred to the auditor of this Court for the purpose of stating the final account of Wilson C. Warren, Administrator, and ascertaining the sum available for which judgment in favor of the District of Columbia may be entered in accordance with Section 20-1502, D. C. Code, 1961 ed., Supp. V., and it is

"FURTHER ORDERED: That upon the filing of the final account and approval thereof by the Court, a judgment in favor of the District of Columbia be entered against Wilson C. Warren, to the extent of the assets available for said judgment."

2. For the purpose of executing the Orders of Reference, the Auditor held meetings with counsel, after notice by mail, copy of which is attached.

3. From the information obtained at the meetings with counsel and from an examination of the records, papers and documents filed herewith, and other data supplied, the Auditor finds as follows:

(a) Matilda I. Ratcliffe died on September 22, 1962, intestate, a resident of the District of Columbia. She left as her heirs at law and next of kin, ten (10) adult nieces and nephews.

(b) Upon petition of Wilson C. Warren, one of the decedent's nephews, Letters of Administration were granted unto Wilson C. Warren by Order of this Court dated November 29, 1962, and he qualified as Administrator on December 12, 1962.

(c) The estate left by Matilda I. Ratcliffe, the decedent, consisted of a savings account in the amount of \$2,870.51 on deposit at the Jefferson Federal Savings and Loan Association; \$488.27 held by The Superintendent of St. Elizabeths Hospital; one wrist watch valued at \$5.00 and one gold wedding band valued at \$8.00.

(d) On October 23, 1964, the Court entered an order approving the restated First Account of Wilson C. Warren, Administrator. Said Account reflects a balance of \$2,690.82 to be accounted for by the Administrator. This balance consists of cash on deposit at the Jefferson Federal Savings and Loan Association in the amount of \$2,677.82 and jewelry valued at \$13.00.

(e) The administration file reflects that a Second Account was filed by the Administrator on December 14, 1964 and that a restated Second Account of said Administrator was filed on December 9, 1966. Since the filing of said restated account, the Office of the Register of Wills has attempted to have the Administrator furnish the necessary information to complete the audit of the restated Second Account.

(f) On July 28, 1967, the District of Columbia Government filed a motion inter alia, to have the matter referred to the Auditor to state a Final Account of the Administrator. Court Order dated August 28, 1967, granted said motion. Said Order is set forth in detail in paragraph one (l) hereof.

(g) During the course of the administration proceeding, the District of Columbia probated a claim for the maintenance and care furnished the decedent at St. Elizabeths Hospital between March 5, 1935 and September 22, 1962, in the amount of \$31,860.30. On March 2, 1964, the Administrator rejected this claim of the District of Columbia Government.

(h) On March 25, 1964, the District of Columbia commenced Civil Action No. 731-64, by the filing of a complaint for money due against Wilson C. Warren, Administrator of the Estate of Matilda I. Ratcliffe, deceased. Said complaint asked for judgment against said Administrator in the amount of \$31,860.30. After further proceedings, the Court entered an order dated December 31, 1964, granting the motion of the District of Columbia for summary judgment and ordered that judgment be entered in favor of the District of Columbia in the amount of \$31,860.30, representing the unpaid balance of the cost of care and treatment of Matilda I. Ratcliffe at St. Elizabeths Hospital, against Wilson C. Warren, Administrator of the Estate of Matilda I. Ratcliffe.

(i) This Order was appealed and the United States Court of Appeals for the District of Columbia Circuit entered a judgment dated June 16, 1965, vacating the judgment of the United States District Court for the District of Columbia and remanded the cause to the District Court for entry of judgment in accordance with the provisions of D. C. Code, Title 20, Section 502 (1961 Ed.)

(j) The District of Columbia, filed on July 28, 1967, a motion for an Order of Reference to state the Final Account and entry of judgment,

and the Court entered an Order on August 28, 1967 referring the matter to the Auditor, the contents of said Order being set forth in paragraph 1 hereof.

4. During the course of the proceedings before the Auditor, the Administrator, Wilson C. Warren, was adjudicated to be an incompetent on January 16, 1968 and Adelaide B. Warren was appointed Committee of the Estate of Wilson C. Warren by the Circuit Court of Baltimore County, Maryland. The Auditor prepared and filed a Preliminary Report with the Court on April 10, 1968, recommending that a Guardian ad litem be appointed to represent the Administrator in the proceedings before the Auditor. Court Order dated June 26, 1968, appointed Hamilton W. Kenner, Guardian ad litem for the said Wilson C. Warren, Administrator.

5. From a review of all books, records, canceled checks, documents and papers submitted to the Auditor, the Auditor is stating below the Final Account of Wilson C. Warren, Administrator of the Estate of Matilda I. Ratcliffe, covering the period January 1, 1964 through September 30, 1967:

Dr.

Balance brought forward
from First Account,
consisting of:

Jefferson Federal
Savings and Loan
Association,

Account No. 30627-4 \$2,677.82

Jewelry:

Wrist watch	\$5.00
Gold wedding band	<u>8.00</u>

13.00 \$2,690.82

Dividends on savings

account with the
Jefferson Federal
Savings and Loan
Association:-

1964

1st	\$27.42
2nd	27.80
3rd	28.10
4th	<u>29.34</u> \$112.66

1965

1st	\$29.01
2nd	28.58
3rd	28.88
4th	<u>28.00</u> 114.47

1966

1st	\$29.33
2nd	29.67
3rd	29.72
4th	<u>30.05</u> 118.77

1967

1st	\$30.39
2nd	30.73
3rd	31.08
4th	<u>31.08</u> \$123.28

1968

1st	31.43
2nd	<u>33.55</u>
	<u>64.98</u>
	534.16

Cr.

December 12, 1964, Eugene F. Dunne, Administrator's bond	\$25.00
January 8, 1965, United States Court of Appeals, Filing fee	5.00
January 8, 1965, Fidelity and Deposit Co., Appeal bond	10.00
February 15, 1965, Clerk, United States District Court, Costs	.80
February 15, 1965, United States Court of Appeals, Court Costs	25.00
August 12, 1965, King Bros., Printing Appeals brief	152.44
September 29, 1965, Register of Wills, Court costs	14.90
August 11, 1966, Eugene F. Dunne, Administrator's bond	25.00
January 19, 1967, Eugene F. Dunne, Administrator's bond	25.00

Balance consisting of the following:

Cash on Deposit:

Jefferson Federal Savings

and Loan Association \$2,858.84

Cash in hand 70.00

Jewelry 13.00

2,941.84

\$3,224.98 \$3,224.98

6. The Auditor recommends that the Account, as stated above, be approved and that the balance of \$2,941.84, be distributed as shown below:

Dr.

Balance down for distribution \$2,941.84

Cr.

Administration expenses:

Reimbursement to Wilson

C. Warren for payment
to Joseph L. Mathis &
Sons for inscription on
monument on decedent's
grave

\$40.00

J. F. Eline,
Balance due on decedent's
funeral

60.00

Wilson C. Warren,
Administrator's commis-
sion, 10 per cent of
\$4,002.81 (gross
estate)

400.29

\$500.29*

*Of this sum of \$500.29, the Administrator,
Wilson C. Warren has already received
\$70.00 in cash and jewelry valued at
\$13.00, a total of \$83.00, thereby leaving
the sum of \$417.29, due him.

Auditing charge for all services under the Order of Reference, including Meeting with Counsel, and for this Report to the Court	200.00
---	--------

Balance available for which judgment in favor of the District of Columbia may be entered in accord- ance with Section 20-1502, D.C. Code, 1967 Ed.	<u>2,241.55</u>
	<u>\$2,941.84</u>
	<u>\$2,941.84</u>

7. The Guardian ad litem has advised the Auditor that he has discussed the matter of distributing the above balance of \$2,941.84, on deposit with the Jefferson Federal Savings and Loan Association with a view toward saving additional administration costs by avoiding the appointment of an Administrator d.b.a. Said Guardian ad litem informs the Auditor that the Jefferson Federal Savings and Loan Association is willing to make the distribution, as shown above, direct to the interested parties.

8. In accordance with the provisions of Section 20-1502, D.C. Code, 1967 Ed., the Auditor recommends that the Court enter judgment against Wilson C. Warren, Administrator, and the Peerless Insurance Company in favor of the District of Columbia in the sum of \$2,241.55.

9. After confirmation of the Report of the Auditor by the Court, order to be prepared and presented by the Adminis-

trator, or his attorney, and upon full settlement and distribution as evidenced by the filing of vouchers, receipts or canceled checks, the Auditor recommends that the Administrator and his surety stand discharged, except as to prior defaults, if any.

10. Copies of this Report have been mailed to all parties listed in Paragraph 11.

11. Notices of the filing of this Report have been furnished the Clerk of the Court, the Register of Wills and the Clerk of the Probate Court for mailing to the following:

Wilson C. Warren
1903 Gwynne Oak Avenue
Baltimore, Maryland

Albert S. Povich, Esq.
Assistant Corporation Counsel, D. C.
Office of the Corporation Counsel
Room 211
451 Indiana Avenue, N. W.
Washington, D.C. 20001

Peerless Insurance Company
705 North St. Asaph Street
Alexandria, Virginia

Adelaide B. Warren
1903 Gwynne Oak Avenue
Baltimore, Maryland

Daniel Partridge, III, Esq.
Investment Building
Washington, D. C. 20005

Alexander W. Spedden, Jr., Esq.
755 Edgewood Street
Baltimore, Maryland

Hamilton W. Kenner, Esq.
910 - 17th Street, N.W.
Washington, D. C. 20006

Respectfully submitted,

John W. Follin

Auditor

[Caption Omitted in Printing]

FILED
WITH THE AUDITOR

NOTICE OF MEETING OF COUNSEL

SEP 26 1967

Daniel Partridge, III
Attorney for Administrator
Investment Building
Washington, D. C. 20005

Wilson C. Warren
Administrator
1903 Gwynne Oak Avenue
Baltimore, Maryland

Albert S. Povich
Assistant Corporation Counsel, D. C.
Office of the Corporation Counsel
Room 211
451 Indiana Avenue, N.W.
Washington, D. C.

Please take notice that on Tuesday, October 10, 1967
at 11:00 a.m., in the Hearing Room of the Auditor, Room 4401,
United States Court House, Washington, D. C. there will be a
Meeting of Counsel for the purpose of considering the execution
of the Order of Reference entered in the above proceedings on
August 28, 1967.

JOHN W. FOLLIN

Auditor

Dated and mailed
September 26, 1967
No Indemnity
No Reporter

Albert S. Povich

ALBERT S. POVICH

Assistant Corporation Counsel, D. C.

Thomas R. Nedrich

THOMAS R. NEDRICH

Assistant Corporation Counsel, D. C.

Attorneys for District of Columbia

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer
Of The District Of Columbia To The Exceptions To Auditor's
Report And Petition For Allowance Of Counsel Fee was mailed,
postage prepaid, to Daniel Partridge, III, Esquire, 1108
16th Street, N.W., Washington, D.C. 20036 and to John W.
Follin, Esquire, Auditor, United States District Court for
the District of Columbia, this 20th day of *August*, 1968.

Thomas R. Nedrich

THOMAS R. NEDRICH

Assistant Corporation Counsel, D.C.

LAW OFFICES OF
DANIEL PARTRIDGE, III
AND
FRANKLIN P. GOULD
1108 SIXTEENTH STREET, N. W.
WASHINGTON, D. C. 20036
STERLING 3-0821

FP GOULD'S BALTIMORE, MD OFFICE
FIDELITY BLDG., PLAZA 2-5306

MR. PARTRIDGE'S VIRGINIA OFFICE
108 SOUTH FAIRFAIR STREET
ALEXANDRIA

October 2, 1967

John W. Follin, Esq.
Office of the Auditor
Room 4401, J. J. Court House
Washington, D.C. 20001

Re: Estate of Matilda I. Ratcliffe
Administration No. 107,194

Dear Mr. Follin:

After receipt of your Notice of Meeting of Counsel in the above matter I telephoned Mr. Povich, and he and I agreed that it would be useless for me to attend. Mr. Warren has been unwilling to follow my advice for a number of years. Unless, therefore, I receive some further request to be present at the contemplated meeting, I will not plan to be there.

Sincerely yours,

/s/ Daniel Partridge, III
For Partridge & Gants

DP:js

cc: Mr. Albert S. Povich
Mr. Wilson C. Warren

RECEIVED

OCT - 3 1967

Corporation Counsel's
Office

[Caption Omitted in Printing]

EFILED
APR 10 1968

PRELIMINARY REPORT OF THE AUDITOR

The undersigned Auditor, John W. Follin, for report to the Court in the above-entitled proceedings, respectfully states as follows:

1. This matter is before the Auditor pursuant to two Orders of Reference dated August 28, 1967 in the above-captioned matters. The two Orders of Reference, which are identical, read as follows:

"Upon consideration of the motion of the District of Columbia for an order of reference to auditor to state final account and for entry of judgment filed herein, and it appearing to the Court that no opposition has been filed thereto, it is, by the Court, this 28th day of August, 1967,

"ORDERED: That the motion for order of reference to auditor to state final account and for entry of judgment be, and the same hereby is, granted, and it is

"FURTHER ORDERED: That this cause be referred to the auditor of this Court for the purpose of stating the final account of Wilson C. Warren, Administrator, and ascertaining the sum available for which judgment in favor of the District of Columbia may be entered in accordance with Section 20-1502, D. C. Code, 1961 ed., Supp. V., and it is

"FURTHER ORDERED: That upon the filing of the final account and approval thereof by the Court, a judgment in favor of the District of Columbia be entered against Wilson C. Warren, to the extent of the assets available for said judgment."

2. For the purpose of executing the two Orders of Reference, the Auditor held meetings with counsel, after notice by mail. In this connection, the attorney of record for the Administrator, Wilson C. Warren, did not attend said meetings. However, Mr. Warren was represented by Alexander W. Spedden, Jr., an attorney in Baltimore, Maryland, who is a long time friend of Wilson C. Warren, Administrator.

3. During the course of the proceedings, the Auditor learned that the Administrator, Wilson C. Warren, was adjudicated to be an incompetent on January 16, 1968 and Adelaide B. Warren was appointed Committee of the Estate of Wilson C. Warren by Decree from the Circuit Court of Baltimore County (In Equity), and recorded in Docket No. 85, Folio 12, Case number 62286. A copy of said Decree, duly authenticated by double certificate, is filed herewith.

4. In view of the fact that Wilson C. Warren has been adjudicated incompetent, the Auditor is of the opinion that in order to proceed to execute the Orders of Reference mentioned in

paragraph 1 above, it is necessary that said Wilson C. Warren be properly represented by legal counsel. While the record reflects that Daniel Partridge, III, Esq., is attorney of record for the Administrator, he has been unable to obtain the cooperation of his client for a number of years. He did not appear at the meetings and hearings before the Auditor because of this fact.

5. The Auditor recommends that the Court appoint a Guardian ad Litem to represent Wilson C. Warren, the Administrator of the Estate of Matilda I. Ratcliff, in the proceedings before the Auditor. The Auditor further recommends that because of his legal disability, the Court remove Wilson C. Warren as Administrator of the Estate of Matilda I. Ratcliffe, and appoint an Administrator, d.b.n., to complete the administration of the estate, based upon the findings made by the Auditor.

6. Copies of this Report have been mailed to all parties listed in paragraph 7.

7. Notices of the filing of this Report have been furnished the Clerk of the Court, the Register of Wills and Clerk of the Probate Court for mailing to the following:

Adelaide B. Warren,
1903 Gwynne Oak Avenue,
Baltimore, Maryland

Albert S. Povich, Esq.,
Assistant Corporation Counsel, D. C.,
Office of the Corporation Counsel,
Room 211,
451 Indiana Avenue, Northwest,
Washington, D. C. 20001

Peerless Insurance Company,
705 North St. Asaph Street,
Alexandria, Virginia

Daniel Partridge, III, Esq.,
1108 - 16th Street, N. W.,
Washington, D. C. 20036

Alexander W. Spedden, Jr., Esq.,
755 Edgewood Street,
Baltimore, Maryland 21229

Respectfully submitted,

John W. Follin

Auditor.

[Caption Omitted in Printing]

FILED

NOTICE OF FILING

APR 10 1968

Please take notice that I have filed this date, April 10, 1968, with the Register of Wills and Clerk of the Probate Court, my Preliminary Report as Auditor under the Order of Reference of August 28, 1967.

The Auditor recommends in said Preliminary Report that the Court appoint a Guardian ad Litem to represent Wilson C. Warren, the Administrator of the Estate of Matilda I. Ratcliffe, deceased, in the proceedings before the Auditor, and further recommends that because of his legal disability, the Court remove Wilson C. Warren as Administrator and appoint an Administrator d.b.n.

JOHN W. FOLLIN

Auditor.

[Caption Omitted in Printing]

EXHIBIT I

FILED
DEC 13 1968

March 27, 1968

John W. Follin, Esq., Auditor
United States Court House
Room 4401
Washington, D.C. 20001

Re: Estate of Matilda I. Ratcliffe and
D.C. v. Warren

Dear Mr. Follin:

I return herewith the tentative draft of your report in the above causes sent to me in your letter of March 25, 1968. I have no suggestions to make for any changes in the same. Please note my change of address.

Very truly yours,

DP:js

Enclosure .

cc: Adelaide B. Warren
Albert S. Povich, Esq.
Alexander W. Spedden, Jr., Esq.
Peerless Insurance Company

[Caption Omitted in Printing]

FILED

JUN 26 1968

ORDER

Upon consideration of preliminary report of the Auditor filed herein wherein it is recommended that the Court appoint a guardian ad litem to represent Wilson C. Warren, Administrator of the estate of Matilda I. Ratcliffe, deceased, it appearing to the Court that said Administrator was adjudicated incompetent on January 16, 1968, by decree of the Circuit Court of Baltimore County, it is, by the

Court, this 26^A day of June , 1968,

ORDERED: that HANTON W. KENNER be, and hereby is appointed guardian ad litem to represent Wilson C. Warren, Administrator, in the proceedings before the Auditor pursuant to the orders of reference entered herein on August 28, 1967.

Copy of the proposed order was mailed, postage prepaid, to Alexander W. Spedden, Jr., Esq., 755 Edgewood Street, Baltimore, Maryland 21229, and to Daniel Partridge, III, Esq., Investment Building, Washington, D. C. 20005, this 28th day of May, 1968.

H. J. O.
JUDGE

Albert S. Povich
ALBERT S. POVICH
Assistant Corporation Counsel, D.C.

[Caption Omitted in Printing]

*FILED
SEP 13 1968*ORDER

Upon consideration of the Exception to auditor's report and Petition for allowance of counsel fee

filed herein, August 13, 1968 it is this 13th day of September, 1968,

ORDERED that the said exception be and the same hereby is ~~denied~~ overruled.

ROBERT M. STEARNS, Clerk

By Linda Fine
Deputy Clerk

AUBREY E. ROBINSON, JR.

PRESIDING JUDGEORDER*FILED
OCT 11 1968*

Upon consideration of the Report of the Auditor filed August 6, 1968, pursuant to the Order of Reference dated August 28, 1967, the Exceptions to Auditor's Report and Petition for Allowance of Counsel Fee, filed thereto, and after oral hearing thereon, wherein said exceptions

were overruled and said counsel fee denied, it is, by the Court, this 30th day of September, 1968,

ORDERED: That the said Report of the Auditor be, and the same hereby is, ratified and confirmed, and it is,

FURTHER ORDERED: That judgment in favor of the District of Columbia, in the amount of \$2,241.55 be, and the same hereby is, entered against Wilson Warren, Administrator, in accordance with Section 20-1502, D. C. Code, 1967 ed., and it is,

FURTHER ORDERED: That the balance of the estate be distributed in accordance with the recommendations contained in paragraph six of the aforesaid Report of the Auditor, as follows:

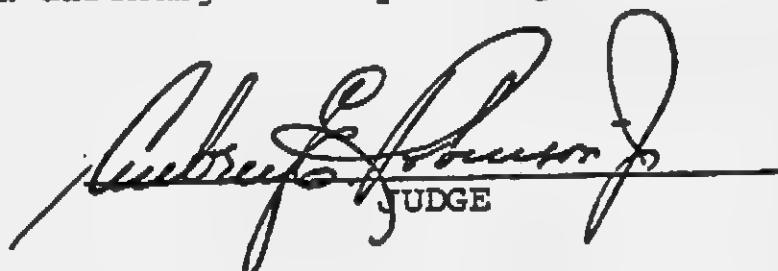
Reimbursement to Wilson C. Warren for inscription on monument of decedent's grave	\$ 40.00
Reimbursement to Wilson C. Warren for balance due on decedent's funeral, paid to J. F. Eline . . .	60.00
Wilson C. Warren, Administrator's commission, 10% of \$4,002.81 . . .	<u>400.29</u>
Sub Total . . . \$ 500.29	*

* Of this sum of \$500.29, the Administrator, Wilson C. Warren, has already received \$70.00 in cash and jewelry valued at \$13.00, a total of \$83.00, thereby leaving the sum of \$417.29, due him.

Auditor's charge	200.00
District of Columbia	<u>2,241.55</u>
Total	\$2,941.84

and it is,

FURTHER ORDERED: That upon filing a verified certificate of distribution and settlement, the fiduciary and his surety shall stand discharged except for prior defaults, if any.



JUDGE

I hereby certify that a copy of the foregoing Order was mailed, postage prepaid, to Daniel Partridge III, Esq.
1108 16th Street, N. W., Washington,
D. C. 20036; John W. Follin, Esq.,
Auditor, United States District Court
for the District of Columbia, Washington,
D. C. 20001; Hamilton W. Kenner, Esq.,
910 17th Street, N. W., Washington, D. C.
20006; Alexander W. Speeden, Jr., Esq.,
755 Edgewood Street, Baltimore, Maryland,
and to Adelaide B. Warren, 1903 Gwynne
Oak Ave., Baltimore, Maryland, this 25th
day of September, 1968.



THOMAS R. NEDRICH

Assistant Corporation Counsel, D. C.

EXHIBIT A TO APPLICATION FOR WRIT OF MANDAMUS

[Caption Omitted in Printing]

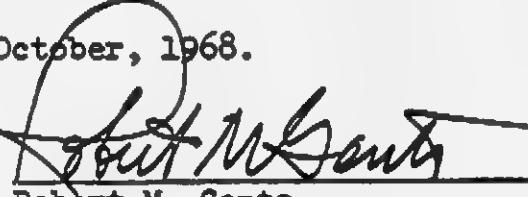
SUPPLEMENTAL ORDER

Upon consideration of the Petition for Allowance of Counsel Fee filed
herein, August 13, 1968 it is this day of October, 1968,

ORDERED that the said Petition for Allowance of Counsel Fee be and the
same is hereby denied.

Judge

I hereby certify that a copy of the foregoing Order, hereto annexed, was
mailed, postage prepaid, to Thomas R. Nedrich, Asst. Corporation Counsel, D.C.
14th & E Streets, N.W., Washington, D.C. 20004; John W. Follin, Esq., Auditor,
U.S. District Court for the District of Columbia, Washington, D.C. 20001;
Hamilton W. Kenner, Esq., 910 17th Street, N.W., Washington, D.C. 20006;
Alexander W. Speeden, Jr., Esq., 755 Edgewood Street, Baltimore, Maryland and
to Adelaide B. Warren, Committee for Wilson C. Warren, 1903 Gwynne Oak Avenue,
Baltimore, Maryland, this 2^d day of October, 1968.



Robert M. Gants

Attorney for Daniel Partridge, III

EXHIBIT F TO APPLICATION FOR WRIT OF MANDAMUS

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA
WASHINGTON 20001

CHAMBER OF
AUBREY E. ROBINSON, JR.
UNITED STATES DISTRICT JUDGE

October 7, 1968.

Robert M. Gants, Esq.
1108 16th Street, N. W.
Washington, D. C. 20036

Dear Mr. Gants:

Re: Estate of Matilda Ratcliffe
Admin. No. 107.194

District of Columbia vs. Wilson C. Warren
Civil No. 731-64

Judge Robinson has asked me to return the
enclosed proposed supplemental order to you.
Upon consideration, he has decided not to
sign this suggested order.

Very truly yours,

Paul L. Friedman

Paul L. Friedman
Law Clerk

Enclosure

[Caption Omitted in Printing]

FILED

OCT 11 1968

NOTICE OF APPEAL

Notice is hereby given this 11th day of October, 1968, that Daniel Partridge, III hereby appeals to the United States Court of Appeals for the District of Columbia from the order of this Court entered on the 13th day of September, 1968, overruling his "Exception to Auditor's Report and Petition for Allowance of Counsel Fee" and from so much of the orders of this Court entered on the 30th day of September, 1968, Ratifying Report of Auditor filed August 6, 1968; Entering Judgment for District of Columbia v. Wilson Warren, Administrator, for \$2,241.55; Authorizing Distribution of Balance of Assets; Discharging Fiduciary and Surety Upon Filing Certificate of Distribution, as does not provide for allowance of counsel fee to Daniel Partridge, III.



Robert M. Gants
Sharp, Partridge, Gants & Perkins
1108 16th Street, N.W.
Washington, D.C. 20036
Attorney for Daniel Partridge, III

NOTICE TO CLERK

Please send copies to the following persons:-

Honorable Aubrey J. Robinson, Jr.
Judge, United States District Court
for the District of Columbia
Washington, D.C. 20001

John W. Follin, Esq.
Auditor
United States District Court
for the District of Columbia
Washington, D.C. 20001

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EXCERPTS FROM PROCEEDINGS

Thursday, Sept. 12, 1968
Washington, D. C.

The above-entitled matter came on for hearing
before The Honorable AUBREY E. ROBINSON, JR., United States
District Judge.

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2 MR. GANTS: * * *

Your Honor, if you will refer to the statement of services rendered by Mr. Partridge appended to his exceptions, Mr. Partridge spent a minimum of eighteen hours time actively representing Mr. Warren. As he has set forth in his petition, Mr. Warren refused to follow Mr. Partridge's advice, thereby

creating many difficult situations. In fact, had Mr. Warren followed Mr. Partridge's advice, this estate could have been settled in 1963.

Now the District of Columbia has answered Mr. 3 Partridge's exceptions, and has stated that Mr. Partridge did in fact receive notice of a hearing before the Auditor for a statement of the account. In support of that the District of Columbia has attached a photostatic copy of a letter wherein Mr. Partridge says he will not attend a meeting of counsel unless his presence is deemed necessary.

I wish to state that Mr. Partridge did not receive notice of a hearing before the Auditor for a statement of the account. What Mr. Partridge did receive was a notice that there was to be a meeting of counsel, which notice stated the purpose of the meeting was to consider the execution of an order of reference--in other words, how to proceed next in this case. This was on September 28, 1967.

* * *

If Your Honor will refer to the stamp which we normally put on our incoming papers in the office, it will reflect the date September 28, 1967.

Now, Mr. Partridge wrote this letter dated October 2 in reply to that notice.

On March 27, 1968, Mr. Partridge received a tentative draft of the Auditor's Report in that proceeding. That draft contained a recommendation that the court appoint guardian ad litem to represent Mr. Warren. In reply to that Mr. Partridge wrote to the Auditor by letter dated March 27, 1968, stating he had no suggestions or changes to be made in the report, and he requested the Auditor then to note his change of address from his then offices to his new offices at 1108 16th Street.

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On April 11, 1968, Mr. Partridge received a notice of filing of that preliminary report. Attached to that notice was the preliminary report.

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THE COURT: What arrangements did we have with the administrator with respect to representation, Counsel?

MR. GANTS: Your Honor, with respect to the representation, Mr. Warren stated initially to Mr. Partridge, after he retained him-

MR. PARTRIDGE: If Your Honor, please, perhaps it would save the Court's time if I answered that. I am Daniel Partridge.

I told Mr. Warren what I thought the commissions

5 on this very small estate would be and suggested that I receive for administering the estate about \$200 and that we have from the administration commission about \$120. This is all correspondence that I received over in Baltimore. He wrote me back to the effect that he thought that the commissions should be divided fifty-fifty, one-half to each of us. And I wrote back and also talked with him over the telephone to the effect that if after the administration of the estate, if he as a fair minded man felt we ought to divide the commissions half and half, that I would accede to that. But I felt at that time that when the administration was complete, considering it would be a very simple administration at that time, that he would know that I would have done all the work and that he would have done very little of it..

Now, since then he has been adjudicated incompetent, and I have no fair minded person other than Your Honor to help me in my situation. I don't think from a legal standpoint that I am bound by my offer at this time to the effect that if he thought it was fair, we would divide the commissions fifty-fifty, which, in effect, on the present state of the record would give me a fee of about \$200.

I am not greedy and I am not practicing law as a

6 money getting trade. I am perfectly agreeable to do whatever Your Honor thinks is fair under the circumstances.

* * *

9 THE COURT: But there was a full commission?

MR. PARTRIDGE: Yes, Your Honor.

THE COURT: So what you want the Court to do is to cut the administrator's commission and allow you a counsel fee within the ten per cent limitations of the statute? Is that correct?

MR. PARTRIDGE: Well, I don't ask the Court to cut the administrator's commission. That would be somewhat disloyal to my client. But I do ask that I be allowed a counsel fee. I think I am entitled to a counsel fee.

* * *

13 MR. GANTS: Your Honor, I think in reply it would

14 be most unjust for the estate in this case to reap the benefit of Mr. Partridge's services, a total of eighteen hours minimum, without at least paying his costs, the minimum time required. Counsel for the District of Columbia has mentioned that he was of the opinion that Mr. Partridge should have withdrawn. Mr. Partridge asked to withdraw. At the urging of the Register of Wills, he did not.

We agree that the District of Columbia should receive the remainder of the estate. They, too, have rendered services that they are not being paid for. All we are asking for is what is due us, nothing more, nothing less.

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